IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 18011 of 2006 (O&M)
Date of Decision: Jan. 25,2007

Dr. Vijender Singh Raparia ..... Petitioner

Versus

State of Haryana and others ..... Respondents

Coram: Hon'ble Mr. Justice Ashutosh Mohunta
Hon'ble Mr. Justice R.S. Madan

Present: Dr. Surya Parkash, Advocate
for the petitioner.

Mr. D.S.Nalwa, Addl. A.G. Haryana.

Mr. R.K.Malik, Advocate for respondent No.3.

....

ASHUTOSH MOHUNTA, J.

The petitioner has challenged the order dated 8.3.2006 (Annexure P-6) by which respondent No.3 has been appointed to the post of Director of Horticulture, Haryana, on the ground that respondent No.3 does not fulfil the requisite qualification prescribed as per the rules i.e. 5 years experience on the post of Joint Director or any other equivalent post. The petitioner has also challenged the order dated 3.11.2006 by which House No. A-1 in Krishi Complex, Sector-21, Panchkula, which was allotted to the petitioner has been allotted to respondent No.3 by relaxing certain conditions.

Respondent No.3 who was working as a Deputy Director in the Directorate General of Works, Central Public Works Department (CPWD), Nirman Bhawan, New Delhi, was appointed to the post of Director of Horticulture by way of deputation for a period of three years by the State of Haryana. He had worked as Deputy Director from 29.6.2000 to 10.5.2006 in the pay scale of Rs.10000-15200.

The first contention raised by the counsel for the petitioner is that respondent No.3 does not possess the essential qualifications for the post of Director of Horticulture, Haryana, as provided under Rules 7 and 9 of the Haryana Horticulture (Group A) Service Rules, 1998 (for short `the 1998 Rules') which provides that for appointment to the post of Director, one should have five years experience on the post of Joint Director. It is contended that as respondent No.3 was never appointed as a

Joint Director in the Central Government rather he remained on a lower post of Deputy Director in the Directorate General of Works CPWD and hence he could not have been appointed to the post of Director of Horticulture. The qualifications for the post of Director of Horticulture are given in Rule 7 and the Appendix `B' to the Rules of recruitment prescribed in Rule 9 which reads as under:-

"The Haryana Horticulture (Group A) Service Rules, 1998

Rule 7: Qualfications:

No person shall be appointed to any post in the Service, unless he is in possession of qualifications and experience specified in column 3 of Appendix B to these rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of appointment other than by direct recruitment.

Appendix-B
(See Rule 7)

Sr. No.	***Designation of posts***	***Academic qualifications And experience, if any for direct recruitment***	***Academic qualifications and experience, if any, for appointment other than by direct recruitment***
1	2	3	4
1	Director of Horticulture	-	(i) Five years experience as Joint Director; or any other Equivalent post. (ii) Knowledge of Hindi upto Matric standard.
2	Joint Director of Horticulture	-	(i) 5 years experience as Dy Director or any other equivalent post (ii) Knowledge of Hindi upto Matric standard.
3	Dy. Director of Horticulture	a) 2nd class M.Sc. in Horticulture from a recognized University or institution b) 5 years Practical experience in Horticulture Research or extension or both after acquiring the minimum basic qualification, and c) Hindi upto Matric Standard	i) 5 years experience as District Horticulture Officer or Supdt. Horticulture, Pinjore and Kishanpura (Jind) or Vegetable Specialist or Fruit Specialist or Floriculturist or State Sericulture Officer ii) Knowledge of Hindi upto Matric Standard

Rule 9: Method of Recruitment

(1) Recruitment to the service shall be made-

(a) In the case of Director-

i. by promotion from amongst the Joint Director, or any equivalent post; or

ii. by transfer or deputation or any officer already in the service of any State Government or the Government of India; or any faculty member of any recognized Agricultural University."

It is contended that for the appointment of Director of Horticulture the essential qualifications are that one should have 5 years experience as Joint Director or any other equivalent post and as respondent No.3 does not have even a single day's experience on the post of Joint Director because he was never promoted to that post, therefore, his appointment to the post of Director of Horticulture be quashed.

Separate replies have been filed on behalf of the State as well as on behalf of respondent No.3.

Learned counsel appearing for the State of Haryana has raised a preliminary objection with regard to the locus standi of the petitioner. It has been contended by the counsel for the State that a perusal of Rule 9 of the 1998 Rules would show that the post of Director of Horticulture can be filled up by way of promotion from amongst the Joint Director or any other equivalent post or by way of transfer or deputation of any officer already in service of any State Government or Government of India or any faculty member of any recognized Agricultural University. Apart from this, a candidate should have 5 years experience as Joint Director or any other equivalent post. It is contended that a perusal of the averments made in para 8 of the writ petition would show that the petitioner himself has stated that he has only 26 months experience on the post of Joint Director. On the basis of the above, it is contended that the petitioner was himself not eligible for consideration for appointment to the post of Director of Horticulture. It is further contended that as the petitioner himself was not eligible to be appointed as Director of Horticulture, therefore, he cannot challenge the appointment of respondent No.3 on the said post. Reliance has

been placed on the case reported as ***State of Orissa v. Ramchandra Dev and others*** AIR 1964 SC 685. On merits, it has been contended by the learned counsel that as per Rule 7 of the 1998 Rules, which deal with the qualifications, a person can be appointed to any post in the service only if he is in possession of qualification and experience specified in Appendix `B' of the 1998 Rules. A perusal of Appendix `B' would show that academic qualification and experience for appointment, other than direct recruitment, to the post of Director of Horticulture is that a candidate should have 5 years experience as Joint Director or any other equivalent post. It is submitted by the learned counsel that respondent No.3 has been appointed on the post of Director by way of deputation. It is further submitted that respondent No.3 before being appointed on the post of Director of Horticulture was working on the post of Deputy Director of Horticulture in the Central Public Works Department, Government of India, in the pay scale of Rs.10000-15200/- and as the post of Joint Director of Horticulture in the State of Haryana carries the same pay scale as that of Deputy Director in the Central Public Works Department, Government of India, therefore, both the posts are equivalent and, hence, respondent No.3 could be appointed to the post of Director of Horticulture. It has further been submitted that nature of duties and responsibilities of both the posts are almost similar.

We have heard the learned counsel for the parties at length.

The first question that arises for consideration in the present case is – Does the petitioner have the locus-standi to challenge the appointment of respondent No.3 and was he himself eligible for the post of Director of Horticulture?

A perusal of the averments made in para 8 of the writ petition shows that the petitioner has himself stated that he has been working on the post of Joint Director and has more than 26 months experience on the said post. A perusal of Appendix `B', Rule 7 of the 1998 Rules clearly stipulates that in order to be appointed to the post of Director of Horticulture a person must have 5 years experience as Joint Director or any other equivalent post. The petitioner even as per his own showing does not possess the experience of 5 years and, hence, he himself is not eligible to be appointed to the post of Director of Horticulture. It is well settled law that in order to invoke the extra ordinary jurisdiction of the High Court under Article 226 of the

Constitution of India, a party has to establish a right. In the present case, no legal right of the petitioner has been infringed as he himself was not eligible to be appointed to the post of Director or Horticulture. In ***Ramchandra Dev's case (supra)*** the Hon'ble Apex Court has held as under:-

> *"(8) On the merits, the position is absolutely clear. Under Art.226 of the Constitution, the jurisdictions of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said Article even for purposes other than the enforcement of the Fundamental Rights and in that sense, a party who invokes the special jurisdictions of the High Court under Art.226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdictions of the High Court under Art.226 is wide in that sense, the concluding words of the Article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Art.226."*

Apart from this, it has been held in ***Annop Singh Gill v. State of Punjab*** 1983(1) SLR 602 that a person who is not eligible for a post has no locus standi to challenge the selection/appointment of a person.

Therefore, in view of the law laid down by the Hon'ble Supreme Court as well as by this Court, it is held that the petitioner has no locus standi to challenge the appointment of respondent No.3 and the writ petition is dismissed on this ground alone.

On merits also, a perusal of Rule 9 (i) and (ii) of the 1998 Rules shows that recruitment to the post of Director can be made by way of promotion from amongst the Joint Directors or any other equivalent post by way of transfer or deputation of any officer.

With regard to appointment of respondent No.3 on deputation to the post of Director of Horticulture, it is relevant to notice that respondent No.3 was working on the post of Deputy Director of Horticulture in the pay scale of Rs.10000-15200/- in the Central Public Works Department (CPWD), Government of India. The pay scale of Deputy Director of Horticulture in the CPWD, Government of India, is equivalent to the pay

scale of Joint Director of Horticulture in the State of Haryana. The nature of duties are also almost similar. Respondent No.3 had worked as Deputy Director in CPWD from 29.6.2000 to 10.5.2006 and, thus, had more than 5 years experience. Apart from this, the post of Deputy Director (Horticulture) in the CPWD, Government of India, is a Feeder Post for recruitment to the post of Director of Horticulture in the CPWD. Therefore, the Government has held that the post of Deputy Director (Horticulture) in the CPWD, Government of India, is equivalent to the post of Joint Director of Horticulture in the State of Haryana. Whether a post is equivalent or not is in the exclusive domain of the Government. As the Government has held that the post of Deputy Director (Horticulture) in the CPWD, Government of India, is equivalent to the post of Joint Director (Horticulture) in the State of Haryana, therefore, the appointment of respondent No.3 as Director of Horticulture on deputation is legal and valid.

The second contention raised by the counsel for the petitioner is that the action of the State of Haryana in re-allotting the house to respondent No.3 which was already allotted to the petitioner earlier, is in violation of the allotment policy (Annexure P-3) as no opportunity of hearing or show cause notice was given to the petitioner before cancelling the allotment of House No.A-1 made in favour of the petitioner. It is contended that the re-allotment made in favour of respondent No.3 is in violation of Rules 5.48 and 5.51-A of the Punjab Civil Service Rules (as applicable to the State of Haryana).

In the present case, it is clear that no show cause notice or any hearing was given to the petitioner before cancellation of allotment of House No.1, Type-A category. Hence, the same is in violation of the principles of natural justice and in violation of Rules 5.48 and 5.51-A of the Punjab Civil Service Rules (as applicable to the State of Haryana).

In view of the above, the order dated 29.11.2006 passed by the Director (Agriculture), Haryana, allotting House No.A-1 in favour of respondent No.3 is quashed. The Director of Horticulture, however, is given the liberty to issue a show cause notice to the petitioner and pass fresh orders after hearing the petitioner with regard to allotment of house.

As a result of the above discussion, it is held that the appointment of Dr. Satyavir Singh as Director of Horticulture, Haryana, on

deputation for a period of three years vide order dated 8.3.2006 (Annexure P-6) is in accordance with law and the same is upheld. However, the orders dated 3.11.2006 re-allotting House No.A-1 in Krishi Complex, Sector-21, Panchkula, in favour of respondent No.3 are quashed with liberty to the respondents to pass fresh orders after issuing show cause notice and hearing the petitioner. There shall be no order as to costs.

(ASHUTOSH MOHUNTA)
JUDGE

25.1.2007 **(R.S.MADAN)**
rupi **JUDGE**